

JOSEPH P. RUSSONIELLO, CSBN 44332
United States Attorney
JOANN M. SWANSON, CSBN 88143
Assistant United States Attorney
Chief, Civil Division
MELANIE L. PROCTOR, CSBN 228971
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102
Telephone: (415) 436-6730
FAX: (415) 436-6927

Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JIN SU,

Plaintiff,

v.

MICHAEL CHERTOFF, Secretary of the
Department of Homeland Security;
ROBERT S. MUELLER, Director of
Federal Bureau of Investigations,

Defendants

No. C 07-4737 JW

ANSWER TO COMPLAINT

COME NOW the Defendants, by and through their counsel, Joseph P. Russoniello, United States Attorney, and Melanie L. Proctor, Assistant United States Attorney, and in answer to the Plaintiff's Complaint ("Complaint"), set forth the following:

1. The allegations in Paragraph One consist entirely of Plaintiff's legal characterizations, to which no response is necessary. To the extent a response is required, Defendants deny the allegations therein.

2. Defendants admit the allegations in Paragraph Two.

3. Defendants admit the allegations in Paragraph Three.

4. Defendants deny the allegations in Paragraph Four.

5. The allegations in Paragraph Five consist entirely of Plaintiff's legal characterizations, to which no response is necessary. To the extent a response is required, Defendants deny the allegations therein.

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6. The allegations in Paragraph Six consist entirely of Plaintiff's legal characterizations, to which no response is necessary. To the extent a response is required, Defendants deny the allegations therein.

7. Defendants deny the allegations in Paragraph Seven.

8. Defendants admit allegations in Paragraph Eight.

9. Defendants admit the first sentence in Paragraph Nine, but aver that the processing times apply only to cases where all background checks and investigations are completed. Defendants admit that Plaintiff's case has remained pending for since the date of filing; however, Defendants aver that her case was subject to a Congressionally mandated cap of 10,000 applications per year, and thus, her case was not eligible for adjudication until the cap was lifted on May 11, 2005.

10. Defendants deny the allegations in Paragraph Ten.

11. Defendants deny the allegations in Paragraph Eleven. Defendants aver that Plaintiff has been free to apply for a refugee travel document which would allow her to travel from and return to the United States. Further, an asylee in the United States is entitled to a work authorization upon proper filing of an application.

12. Defendants deny the allegations in Paragraph Twelve.

AFFIRMATIVE AND/OR OTHER DEFENSES

All allegations not here before specifically admitted, denied, or modified, are hereby denied. For further and separate answer, Defendants allege as follows:

FIRST DEFENSE

The Court lacks jurisdiction over the subject matter of this action.

SECOND DEFENSE

The Complaint fails to state a claim against the Defendants upon which relief can be granted.

THIRD DEFENSE

No acts or omissions by the United States or its employees were the proximate cause of any injury or damages to the Plaintiff.

FOURTH DEFENSE

At all times alleged in the complaint, Defendants were acting with good faith, with justification, and pursuant to authority.

FIFTH DEFENSE

The Defendants are processing the application referred to in the Complaint to the extent possible at this time. Accordingly, no relief as prayed for is warranted.

WHEREFORE, Defendants pray that Plaintiff takes nothing by reason of her suit herein, that judgment be rendered in favor of Defendants, for costs of suit herein incurred, and for such other and further relief as this court may deem proper.

Date: January 14, 2008

Respectfully submitted,

JOSEPH P. RUSSONIELLO
United States Attorney

/s/

MELANIE L. PROCTOR
Assistant United States Attorney
Attorneys for Defendants